



November 6, 2017

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Ex Parte Presentation, *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79

Dear Ms. Dortch:

On November 2, 2017, Scott Bergmann, Kara Graves, and Meagan Sunn of CTIA; Zac Champ and Sade Oshinubi of the Wireless Infrastructure Association (collectively, the “Associations”); Bill Sill and Amos Loveday (by phone) of Atchley Hardin Lane, LLC; and Marie Durant of Ray Quinney and Nebeker (by phone) met with Don Stockdale, Dana Shaffer, Suzanne Tetreault, Jill Springer, Garnet Hanley (by phone), Mary Claire York, Jennifer Salhus, Leon Jackler, Aaron Goldschmidt, Daniel Margolis, and Jeffrey Steinberg of the Wireless Telecommunications Bureau to discuss the above-captioned proceeding.

During the meeting, and consistent with the attached presentation and their jointly filed comments,¹ the Associations discussed the importance of the Commission’s dual goals in the proceeding: protecting sites of historic, religious, and cultural significance to Tribes while enabling the efficient delivery of advanced communications services and technologies nationwide. The Associations urged the Commission to update the Section 106 Tribal consultation process and procedures to reflect these goals.

Also during the meeting, the Associations noted their members’ interest in ensuring that the draft order in this proceeding—which proposes to streamline, in certain instances, the process of deploying wireless broadband²—affords meaningful relief from unnecessary regulatory requirements for replacement facilities that have no potential to affect historic properties.

¹ See Joint Comments of CTIA and The Wireless Infrastructure Association, WT Docket No. 17-79 (filed June 15, 2017); Joint Reply Comments of CTIA and The Wireless Infrastructure Association, WT Docket No. 17-79 (filed July 17, 2017).

² See *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, Report and Order, FCC-CIRC1711-03 (draft rel. Oct. 26, 2017).

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed in ECFS and provided to the Commission participants. Please do not hesitate to contact the undersigned with any questions.

Sincerely,

/s/ Kara Romagnino Graves

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/s/ D. Zachary Champ

D. Zachary Champ
Director, Government Affairs
The Wireless Infrastructure Association
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Attachment

cc: Meeting Participants



Expeditious Wireless Infrastructure Reform Key to America's 5G Leadership

The Wireless Industry Powers Our Economy

Creating New American Jobs and Opportunities

4.6
million

American jobs rely directly or indirectly on the wireless industry

6.5
jobs created

every time the wireless industry employs **one** person, with a 44% higher than average pay

\$400
billion

added to our economy annually from the wireless industry

5G Opportunity

Accenture Forecasts Jobs and Growth



\$275B

New Wireless
Investment



3 million

New Jobs



\$500B

Contribution to GDP

5G Global Race

Keys for Continued U.S. Telecomm Leadership

South Korea has announced 5G trials at the 2018 Winter Olympics

Japan plans to have 5G at the 2020 Summer Olympics in Tokyo

China starting buildout in major cities in 2018; full commercial deployment by 2020

The European Union has committed 700M Euros to 5G R&D



Many Levels to Infrastructure Reform

- Federal
- State
- Local
- NEPA
- **NHPA/Section 106**

01

Improving the Section 106 Tribal Consultation Process

Committed to Achieving the FCC's Twin Infrastructure Goals



**Promoting the rapid
deployment of wireless
service**



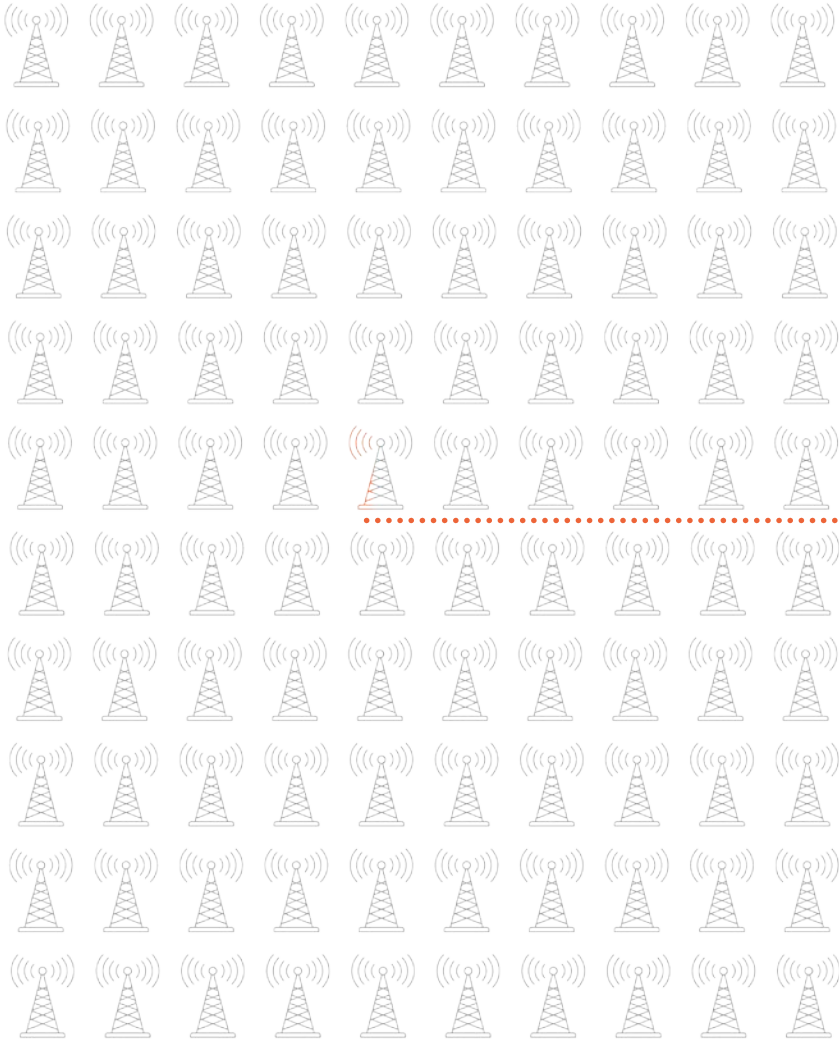
**Preserving historic
sites of Tribal religious
and cultural
significance**

Drawbacks of Current Section 106 Process

Data shows that the current system for Tribal consultation on non-Tribal lands does not encourage meaningful preservation input from the Tribes. Instead, the current system has led to:

- Lengthy, unpredictable timelines
- Ever increasing fees
- Inconsistent/inefficient processes that generate unreliable data
- Overbroad review requests

Minimal Impact of Section 106 Process



Only

**one third of
one percent**

of Tribal reviews of wireless
infrastructure projects result in a
finding of adverse effect

It is Time to Modernize the Section 106 Process

Updating and streamlining the Section 106 process will:

- Make the process more timely, efficient, and predictable
- Help fulfill the Congressional directive to rapidly deploy wireless service
- Continue to preserve sites of religious and cultural significance to Tribes
- Address Tribal fees, which research shows are connected to expanding areas of interest and participation without meaningful review

CTIA/WIA Three-Step Plan to Solve Section 106 Challenges

The FCC should provide clarity and certainty by:

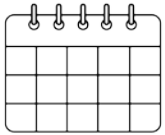
1. Setting finite timelines for Tribal consultations;
2. Clarifying that projects on non-Tribal lands may progress without paying Tribes to act as consulting parties; and
3. Establishing uniform processes to reduce consultation burdens and inefficiencies

02

Section 106 Challenges and Solutions: Timelines

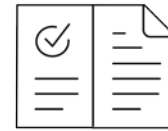


Section 106 Timeline Challenges



110 days

the average time for
completing Section 106
consultation with Tribes



30%

of all Tribal reviews take
more than 120 days to
complete

Establish Clear Guidelines to Speed Tribal Reviews

FCC can reduce delays in Tribal reviews of wireless infrastructure projects on non-Tribal lands by clarifying that:

- 30 days is a reasonable period for Tribal review and response
- There is a rebuttable presumption that the Preliminary Form 620/621 Submission Packet is sufficient for review
- Batch processing of applications, subject to reasonable limitations, is permitted

03

Section 106 Challenges and Solutions: Fees



Section 106 Fee Challenges

The per-project fees for Section 106 Tribal consultations have increased dramatically just over the past year



30%

increase in the average
cost per Tribe that
assess fees between
2015 and 2016



50%

increase in the average
collocation fees between
2015 and 2016

Section 106 Fee Challenges

Review fees are about to exponentially increase:

- More Tribes are requesting fees
- Multiple Tribes routinely request review fees on the same project (as many as 35 Tribes have requested reviews of a single project)
- 5G will require Tribal consultation for hundreds of thousands of small cells not exempted by current regulations over the next few years

Guidelines for Addressing Escalating Fees

FCC should clarify that, for projects located on non-Tribal lands, Tribes serve as consulting parties under Section 106, and payment of fees is not required for a project to move forward.

Such action is consistent with practices of other federal agencies as well as longstanding ACHP guidance.



ACHP Section 106 Fee Guidance:

Throughout the Section 106 process, the regulations impose on Federal agencies (and applicants who assume an agency's duties) an obligation to consult with Tribal Historic Preservation Officers and Indian tribes. These occasions range from the initial scoping of Section 800.3, through the identification, evaluation and effect assessment of Sections 800.4 and 800.5, to the resolution of adverse effects in Section 800.6.

The purpose of this role is to give the Indian tribe an opportunity to get its interests and concerns before the agency. In these situations, the Federal agency obligation is to seek and consider the views of participating Indian tribes. This means it must make an effort to solicit a tribe's opinions and factor them into the decisions that the agency must make on the project.

The consultation requirement thus gives an Indian tribe the ability to advocate the outcome it would like to see the agency ultimately take in the final project decision.

When the Federal agency or applicant is seeking the views of an Indian tribe to fulfill the agency's legal obligation to consult with a tribe under a specific provision of ACHP's regulations, the agency or applicant is not required to pay the tribe for providing its views.

If the agency or applicant has made a reasonable and good faith effort to consult with an Indian tribe and the tribe refuses to respond without receiving payment, the agency has met its obligation to consult and is free to move to the next step in the Section 106 process.

04

Section 106 Challenges and Solutions: Inconsistent Processes Result in Inefficient Reviews which Yield Questionable Data and Findings

Section 106 Process Challenges

Section 106 Tribal consultation is increasingly inefficient, costly, and burdensome, particularly because:

- TCNS does not function as an effective planning tool
- There are no meaningful checks on expanding areas of interest
- Tribes are increasingly requiring the use of Tribal monitors

Section 106 Process Challenges

More Tribes are claiming ever-expanding areas of interest



Little Traverse Bay Band of Odawa
Indians expanded Tribe's areas of
geographic interest in 2015 by

400%

Section 106 Process Challenges

Some Tribes are reviewing more projects than they have resources to credibly perform.

12.4*

Average number of Section 106 reviews per day in 2014 reported by Keweenaw Bay Indian Community THPO (all finding “no effect”) from a staff of 3 who also had other duties

Less than 3**

Average number of Section 106 reviews per day reported by SHPO dedicated full-time staff

Reforming TCNS Can Lead to More Efficient and Credible Reviews

- Information sharing from TCNS can reduce burdens for Tribes and applicants
- Improving transparency can ensure appropriate Tribal areas of interest
- Setting guideposts for Tribal monitoring will avoid excesses

05

FCC Authority to Reform Section 106 Process

FCC Section 106 Jurisdiction

FCC has authority over Section 106 requirements and compliance on non-Tribal lands.

- Tribes are consulting parties on non-Tribal lands
- NHPA and ACHP Guidance provide that each Agency should fashion its Tribal consultation process as appropriate to the Agency's mission
- FCC operates under a “general Tribal trust duty” for Section 106
- Other federal agencies do not cede control under Section 106



Department of Veteran Affairs Tribal Consultation Policy defines limits of Tribal consultation, as follows:

- a. This policy will not diminish any administrative or legal rights and remedies otherwise available by law to VA or American Indian or Alaska Native Tribes.
- b. The Policy does not prevent VA or the Tribes from entering into Memoranda of Understanding, Intergovernmental Agreements, Joint Powers Agreements, professional service contracts, or other established administrative procedures and practices mandated by Federal law or Tribal laws or regulations.
- c. VA retains final decision making authority with respect to actions undertaken by VA and within Federal jurisdiction. In no way should this Policy impede VA's ability to manage its operations.
- d. This Policy is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable law by a party against the United States, VA, or any person.

Formal, Universal, and Enforceable Tribal Review Process Needed

FCC should create standard process for all Tribal reviews.

- Negotiated best practices are not an adequate substitute
- Modernized, uniform process will reduce delays and fulfill the FCC's mandate to rapidly deploy wireless while also protecting historic and cultural sites
- Applicants must be allowed to proceed after a reasonable time when Tribes (1) do not respond; or (2) demand fees when functioning as consulting parties; or (3) request non-standard information as a pre-requisite to Section 106 review

06

Removing Twilight Towers from Regulatory Limbo



Resolution of Twilight Towers Issue is Long Overdue

FCC should exclude collocations on Twilight Towers (*i.e.*, towers built between March 16, 2001 and March 7, 2005) from historic preservation reviews.

Rationales

- No clear FCC regulatory requirement for consultation with SHPOs or THPOs prior to 2005
- Consistent with approach taken in 2001 Collocation NPA
- Extremely low likelihood of impact
- Facilitates broadband deployment and fulfills FCC's mission to promote rapid deployment of broadband services

“

“It defies explanation that we have not resolved an issue that we have known about for twelve years.”

- Commissioner O’Rielly